

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WALTER F. SCOTT,)
Plaintiff,)
v.)
MCNEARNEY & ASSOCIATES, LLC.,) No. 4:03-CV-1160 CAS
et al.,)
Defendants.)

MEMORANDUM AND ORDER

This closed matter is before the Court on plaintiff's "motion for relief and to stay proceedings to enforce judgment." Plaintiff seeks to stay enforcement of the Court's Order of August 10, 2006, which awarded costs to defendant McNearney & Associates, L.L.C. ("McNearney"), in the amount of \$295.50. Plaintiff asserts that he is filing the motion pursuant to Rules 59, 60(a), 60(b)(2) and 62 of the Federal Rules of Civil Procedure. Plaintiff requests that the Court stay its award of costs pending disposition of the appeal in this matter.

The Court granted defendant McNearney's motion for summary judgment on plaintiff's claims and entered judgment in favor of McNearney on April 26, 2005. Plaintiff filed a notice of appeal on May 31, 2005. McNearney filed a motion for bill of costs on June 2, 2005, and plaintiff did not file any objections to the bill of costs. Pursuant to Eastern District of Missouri Local Rule 8.03, costs will be taxed as claimed in the bill if no timely objection is made. The Court issued an order to tax costs as claimed, on August 10, 2006.

Plaintiff's motion asserts that McNearney is not a prevailing party entitled to costs because the appeal of this matter is still pending, plaintiff is likely to succeed on the merits of his appeal, and plaintiff will suffer irreparable harm if the award of costs is not stayed.

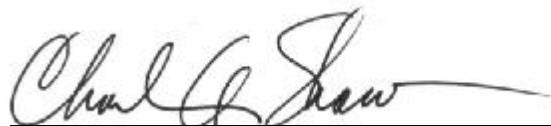
Plaintiff's motion should be denied. On September 22, 2006, the United States Court of Appeals for the Eighth Circuit issued its opinion which affirmed this Court's grant of summary judgment in favor of McNearney. See Scott v. McNearney & Associates, No. 05-2621 (8th Cir. Sept. 22, 2006) (unpublished per curiam).

In addition, the Court had jurisdiction to award costs to McNearney while this matter was pending on appeal. See Hunter v. Underwood, 362 F.3d 468, 475 (8th Cir. 2004) (although a federal district court and a federal court of appeals should not assert jurisdiction over a case at the same time, a notice of appeal only divests the lower court of jurisdiction over aspects of the case that are the subject of the appeal). The bill of costs is separate from the issues subject to the appeal in this action. Moreover, plaintiff did not object to the motion for bill of costs. Cf. Smith v. American Airlines, Inc., 414 F.3d 949, 954 (8th Cir. 2005) (motion to reconsider taxation of costs properly denied where local rule requiring objections to bills of cost within fourteen days was clear and plaintiff failed to object).

For these reasons, the Court will deny plaintiff's motion for relief and to stay proceedings.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief and to stay proceedings is **DENIED**. [Doc. 163]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of September, 2006.